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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,202	05/19/2005	Stephen E. Bachman	Ganado 02.01	6411

7590 10/07/2008  
Dale F Regelman  
Law Office of Dale F Regelman  
4231 S Fremont Avenue  
Tucson, AZ 85714

EXAMINER
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YOUNG, MICAH PAUL

ART UNIT	PAPER NUMBER
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1618

MAIL DATE	DELIVERY MODE
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10/07/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/510,202	<b>Applicant(s)</b> BACHMAN ET AL.	
	<b>Examiner</b> MICAH-PAUL YOUNG	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/15/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

Art Unit: 1618

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 8/15/05 was filed after the mailing date of the Specification on 10/01/04. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 5-9, 11-15, 17-21, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Miller (USPN 5,022,566 hereafter '566) in view of Seib et al (USPN 4,647,672 hereafter '672) and Claycamp et al (US 2002/0136778 hereafter '778). The claims are drawn to a method of improving various meat characteristics in ruminant livestock comprising administering a feed composition comprising ascorbic acid derivatives.

Art Unit: 1618

The '566 patent discloses a method of improving various physically characteristic of ruminant animals by administering a feed composition (abstract). The improved characteristics include hot carcass weight, carcass grade, 12th rib thickness, rib eye area, marbling, final live weight (col. 5, lin. 29-40, Table 4). The feed composition comprises a vitamin mineral mix, fiber and protein sources (Table 1). The animals are fed the composition from 2-6 days until they are achieving a final weight before the carcasses are harvested (col. 5, lin. 20-45). The reference discloses fiber and protein sources yet is silent to the specification of the vitamin mix and other constituents of the instant claims.

The '672 patent discloses a feed composition comprising L-ascorbic acid derivatives (abstract). The derivatives include phosphorylated ascorbic acids derivatives (examples). These compounds can be applied to feed composition as a vitamin C additive where the composition increased the weight of the animal over a given period of time (Figures). The '672 patent establishes the level of skill in the art regarding the inclusion of ascorbic acid derivatives and their positive effects on weight gain in animals.

The '566 patent is also silent to the inclusion of the specific fiber source of the instant claims. These fiber sources are well known in the art as seen in the '778 reference. The '778 patent discloses a feed composition that is useful in increasing the milk production and quality of ruminant animals (abstract). The feed composition comprises vitamins such as vitamin C [0027], fiber sources such as citrus pulp and molasses [0025]. The fiber sources are present in a concentration of approximately 45% while the cane molasses is present in an amount of approximately 5% [0034]. It would have been obvious to combine the molasses and citrus pulp of the '778 reference into the feed stock of the '566 patent since they both disclose feed stock

Art Unit: 1618

compositions useful in improve physical characteristics of ruminant animals and comprise similar compositions.

Regarding the specific concentrations of the instant claims it is the position of the Examiner that such limitations are obviated by the prior art. The instant claims recite a method of improving various characteristics by applying a formulation comprising vitamin C, citrus pulp and molasses in broad approximate ranges. The combination of the prior art provides a feed composition that improved every area of ruminant carcass qualities that comprises vitamin, molasses, and citrus pulp. The prior art combination functions to improve the carcass properties of the animals specifically weight, fat and marbling. It is the position of the Examiner that the combination of the prior art discloses the general condition of the instant claims. As such it is not inventive to discover the optimum or workable ranges by routine experimentation. *See In re Aller*, 220 F.2d 454 105 USPQ 233, 235 (CCPA 1955).

Furthermore the claims differ from the reference by reciting various concentrations of the active ingredient(s). However, the preparation of various pharmaceutical compositions having various amounts of the active is within the level of skill of one having ordinary skill in the art at the time of the invention. It has also been held that the mere selection of proportions and ranges is not patentable absent a showing of criticality. *See In re Russell*, 439 F.2d 1228 169 USPQ 426 (CCPA 1971).

With these things in mind it would have been obvious to combine the components of the '778 and '672 patents in to the feeding method of the '566 patent in order to increase the overall harvested characteristics of the meta such as marbling, fat content and carcass grade. It would have been obvious to combine these disclosures since each reference discloses animal feed

Art Unit: 1618

composition useful in improving a harvesting characteristic (12th rib fatness, milk quality, weight). One of ordinary skill in the art would have been motivated to combine disclosures with an expected result of a method of improving the meat quality of ruminant animals with a stable feed composition.

Claims 1, 4, 7, 10, 13, 16, 19 and 22 rejected under 35 U.S.C. 103(a) as being unpatentable over the combined disclosures of Miller (USPN 6,022,566 hereafter '566) in view of Kirschner et al (USPN 6,352,713 hereafter '713). The claims are drawn to a method of improving various meat characteristics in ruminant livestock comprising administering a feed composition comprising ascorbic acid derivatives.

As discussed above the '566 patent discloses a method of improving many physical characteristic of harvested meat by administering a feed composition comprising vitamins, fiber and protein sources and other components. The reference discloses that vitamins can be applied yet is silent to the specific vitamins of the instant claims. Vitamin C is a common additive useful in improving the overall health of any patient taking it. feed component as shown in the '713 patent. The '7163 patent discloses a vitamin supplement formulation comprising vitamin C, wherein vitamin C includes ascorbic acid derivatives such as L-ascorbic acid sulfate (col. 8, lin. 15-20). The vitamin supplement can be included in foods and animal feeds delivered orally (col. 8, lin. 55-col. 9, lin. 10). It would have been obvious to include the specific ascorbic aid derivatives of the '713 patent in to the feed stuff of the '566 patent since it would improve the physical state of the animals.

With these things in mind it would have been obvious to include the specific ascorbic acid derivatives of the '713 patent into the formulation of the method of the '566 patent in order

Art Unit: 1618

to improve the health of the animals thereby improving their harvested meat. It would have been obvious to combine the teachings and disclosures as such with an Expected result of a safe noninvasive, natural method of improve livestock harvested meat.

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICAH-PAUL YOUNG whose telephone number is (571)272-0608. The examiner can normally be reached on Monday-Friday 7:00-4:30; every other Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael G. Hartley/  
Supervisory Patent Examiner, Art Unit 1618

/MICAH-PAUL YOUNG/  
Examiner, Art Unit 1618